Chapter-2

Strategic Merger and Amalgamation: A Conceptual Approach
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2.1 Introduction

The previous chapter reviewed available literature on mergers in both the domestic and international arena. It reviewed various studies entailing diversified aspects of mergers and amalgamations in banking sector followed by the research gap. It includes scope and objectives of the study and the research design and methodology employed by the researcher in the study. All the statistical and accounting tools that are used to measure the impact of the merger are discussed elaborately. This chapter at a glance presents the global scenario regarding investment, growth and development. The strategic mergers and amalgamations as a tool for investment as well as its growth are discussed at length. The concepts and terminologies associated with mergers and amalgamations have been examined. The global and domestic merger scenario is further examined in detailed. The waves of mergers and amalgamations over time are studied, along with motivational forces behind mergers and amalgamations in India. It is a legal process too and is subjected to various laws and regulations. The provisions and sections under various laws which are relevant to mergers are discussed here, in order to provide an understanding about the legal process governing this mode of expansion. In addition, the chapter also dealt with the mergers and amalgamations in India. Further, the liberalization of Indian economy and its growth as one of the fastest growing economy since economic liberalization is discussed in detail. An attempt is also made to study the global economic scenario from the point of view of mergers and amalgamations. The recent growth in the number of deals is studied in general and also various sectors and economies in particular.

2.2 Concepts of Strategic Mergers and Amalgamations

In the contemporary world, news regarding mergers, takeovers, restructuring and corporate control make newspaper headlines daily. Mergers and corporate restructuring have become topics of great importance in the global corporate arena. They represent a major force in modern financial and economic environment. In this globalized era where the technology changes continue to accelerate, more and more companies are finding mergers to be a compelling strategy for growth. Whether in times of boom or bust, mergers continue to be the preferred option for businesses
seeking to grow rapidly. Mergers is the aspect of corporate strategy, corporate finance and management dealing with buying, selling, dividing and combining of different companies and similar entities that can help an enterprise grow rapidly in its sector or location of origin, or a new field or new location, without creating a subsidiary, other child entity or using a joint venture. The distinction between a "merger" and an "acquisition" has become increasingly blurred in various respects (particularly in terms of the ultimate economic outcome), although it has not completely disappeared in all situations. It is basically the financial restructuring method beneficial for the corporates around the world. Restructuring is a process by which a corporate enterprise seeks to alter what it owes, refocus itself to specific task performance. This could be done after making detailed analysis of itself at a point of time. At times restructuring would radically alter a firm’s product market mix, capital structure, asset mix and organization so as to enhance the value of the firm and to attain competitive edge on sustainable basis. Financial restructuring is the process of reorganizing the company by affecting major changes in ownership pattern, asset mix, operations which are outside the ordinary course of business. Thus, financial restructuring covers many things such as the mergers and takeovers, divestitures, leveraged, recapitalization, spinoffs, curve-outs, reorganization of capital and financial re-construction. Figure 2.2.1 presents broad view of different forms of Organizational Restructuring which can be seen these days in the Corporate World:

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1. Kumar, B Rajesh, 'Merger and Acquisition Text and cases', Tata McGraw Hill Education Private Limited, (2011), pp.1, 7 West Patel Nager New Delhi-110008 retrieved from http://books.google.co.in/books?id=T05I94Yf0YC&pg=PA69&lpg=PA69&dq=reverse+merger+example+ioici+bank&source=bl&ots=25JH1s5vqGUp&sig=HrquVwMBVksBy6TYRtH2U51R3w&hl=en&sa=X&ei=KIQJUYHdLs_KrAfe3YHYCA&ved=0CEgQ6AEwAg#v=onepage&q&f=false

2. 'Mergers and Acquisitions', retrieved from http://en.wikipedia.org/wiki/Mergers_and_acquisitions

3. Weston, John Fred, Chung, Kwang S. and Hoag, Susan, 'Mergers, Restructuring and Corporate Control', Prentice Hall, the University of Michigan, (1990), retrieved from http://books.google.co.in/books?id=9mcPAQAAMAAJ&q=Mergers, Restructuring, and Corporate Control&dq=Mergers, Restructuring, and Corporate Control&hl=en&sa=X&ei=tyW8UeqXOMOOrQfLtoCQBg&ved=0CDAQ6AEwAA

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Figure 2.2.1: Forms of Restructuring Business firms.

Source: Adapted from Weston, Chung and Hong, 1998, Mergers, Restructuring and Corporate Control

M&As, by which two companies are combined to achieve certain strategic and business objectives, are the transactions of great significance not only to the companies, but also to all other stakeholders, like employees, competitors, communities and the economy. Their success or failure has enormous consequences for shareholders and lenders as well as the above mentioned constituents. Events like M&A are of great significance in the modern political environment. The historic corporate battle between Mittal Steel and its unsolicited hostile bid on Arcelor stirred up passions in Europe, with politicians, ministers and even ordinary citizens joining in the discussion. In this context, France and Luxembourg have been accused of protectionism. Meanwhile, other steel makers like Japan’s Nippon Steel, the world’s third largest steel company after Mittal Steel and Arcelor have adopted the ‘poison pill’ strategy to thwart hostile takeovers in the future.4

Strategic Mergers

A Strategic merger usually refers to long term strategic holdings of target (Acquired) firm. This type of merger process aims at creating synergies in the long run by increasing market share, broad customer base, and corporate strength of business. The strategic acquirer may also be willing to pay a premium offer to target firm in the outlook of the synergy value created after mergers and amalgamations process.

There are some disagreements on the precise meaning of various terms relating to the forms of business combinations, viz: Merger, Amalgamation, Absorption, consolidation, acquisition, takeover etc. Sometimes these terms are used interchangeably, in broad sense even when there are legal distinctions between the kinds of combinations. The related terminologies are described below:

A. Merger:

A merger is a combination of two or more companies into one company. It may be in the form of one or more companies being merged into an existing company or a new company may be formed to merge two or more existing companies. The Income tax Act, 1961 of India uses the term ‘amalgamation’ for merger. Thus, Merger or Amalgamation may take any of the two forms:

I. Merger or Amalgamations through absorption

II. Merger or Amalgamations through consolidation

Absorption: It is a combination of two or more companies into an ‘existing company’. In a merger through absorption, all companies except one go into liquidation and lose their respective separate identity. For example, one bank acquires the other.

A + B = A: Here, two entities A and B merge such that one, says B loses entity, and other entity A become enlarged one. In this case, A is the acquiring company and B is the target or acquired company. This is generally called as absorption (i.e. B is absorbed by A) or 100% or ‘complete takeover’ of one company by the other.

Consolidation: It is a combination of two or more companies into a ‘new company’. In this form of merger, all companies are legally dissolved and a new entity is created or all the existing companies, which combine, go into liquidation and form a new company with a different entity. Here, the acquired company transfers its assets, liabilities and shares to the acquiring company for cash or exchange of shares. Consolidation i.e. two or more banks combine to form a new entity. In India the legal term for merger is amalgamation.

According to AS-14, “Accounting for Amalgamation”, it means an amalgamation pursuant to the provisions of the Companies Act, 1956 or any other statute which may be applicable to companies. Amalgamation signifies transfer of all or some part of the assets and liabilities of one or more than one existing company to another existing

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6 Ibid., pp.36.3
7 Shrivastava, Mohan Prasad, Loc. Cit
10 Shrivastava, Mohan Prasad, Loc. Cit
company or of two or more existing companies to a new company of which
Transferee Company or all the members of the Transferor Company or companies
become or have the right of becoming members. Generally, such amalgamation is
accomplished by a voluntary winding-up of the transferor company or companies.  
11
A + B = C: Here, combining two entities A and B, the new entity C is formed such
that A and B cease to exist. This is generally called as amalgamation, i.e., the
amalgam C is formed by A and B.  
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3. Acquisitions:
The terms mergers and acquisition used jointly simultaneously in the present scenario
but it has some distinction. An acquisition or takeover is the purchase of controlling
interest in the share capital, or all or substantially all of the assets and/or liabilities, of
one company by the other company. Acquisitions act as the quickest route through
companies which can operate in new markets and can add new capabilities and
resources to the existing ones. It simply an act of acquiring control over the
management of other companies, the control over the management of another
company can be acquired through either a friendly takeover or through force or
hostile merger. A takeover may be friendly or hostile, depending on the offeror
company’s approach, and may be effected through agreements between the offeror
and the majority shareholders, purchase of shares from the open market, or by making
an offer for acquisition of the offeree’s shares to the entire body of shareholders.  
13The
term merger separately discussed in above.
A + B = A_1 + B : In this form, both the entities A and B combine in such a way that
no one loses entity, but one of them says A, controls the affairs of B. A changes its
status to A_1 and becomes the holding company of B by purchasing the controlling
shares of B this is called partial take over and may be termed equity alliance.
A + B = A + B: This is a form where both the companies A and B combine to form
some strategic alliance on specific issues to form some cartel or pool. There is no
balance sheet impact of two companies.
The form of mergers depends upon the variety of criteria in order to correctly asses
the prospective integration situations on the basis of the optimal form of business

11Mergers, and Acquisitions & Restructuring, Retrieved from
12Ray, Kamal Ghosh., op.cit.pp.7
13Desai, Nithi, ‘Merger and Acquisitions in India” (2010) retrieved from

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combination. The two most important and central criteria for deciding the forms of business combinations are necessity of strategic interdependence and necessity for organizational autonomy.\textsuperscript{14}

**Friendly takeover:** Also commonly referred to as 'negotiated takeover'. It is a friendly takeover which involves an acquisition of the target company through negotiations between the existing promoters and prospective investors. This kind of takeover is resorted to further some common objectives of both the parties.\textsuperscript{15}

**Hostile Takeover:** A hostile takeover can happen by way of any of the following actions: if the board rejects the offer, but the bidder continues to pursue it or the bidder makes the offer without informing the board beforehand.\textsuperscript{16} On the contrary like blackmail, **greenmail** is money that is paid to an entity to make it stop an aggressive behavior. In mergers and acquisitions, it is an antitakeover measure where the target company pays a premium, known as greenmail, to purchase its own stock shares back (at inflated prices) from a corporate raider.\textsuperscript{17}

**Leveraged Buyouts:** These are a form of takeovers where the acquisition is funded by borrowed money. Often the assets of the target company are used as collateral for the loan. This is a common structure when acquirers wish to make large acquisitions without having to commit too much capital, and hope to make the acquired business service the debt so raised.

**Bailout Takeovers:** Another form of takeover is a ‘bail out takeover’ in which a profit making company acquires a sick company. This kind of takeover is usually pursuant to a scheme of reconstruction/rehabilitation with the approval of lender banks/financial institutions. One of the primary motive for a profit making company to acquire a sick/loss making company would be to set off of the losses of the sick company against the profits of the acquirer, thereby reducing the tax payable by the acquirer. This would be true in the case of a merger between such companies as well.\textsuperscript{18}

\textsuperscript{14}Ray, Kamal Ghosh., **Mergers and Acquisitions strategy, Valuation and Integration** [online Text] Eastern Economy Editions PHI Learning Pvt. Ltd, Delhi (2010) Retrieved from http://books.google.co.in/books?id=9qGYvpV99oC&pg=PA870&dq=merger+and+acquisitions+strategies+valuations+and+integrations&hl=en&sa=X&ei=yl1AUF7RC4r5rQeAs4DgBA&ved=0CDUQ6wEwAA

\textsuperscript{15}Desai, Nithi., Loc.Cit.

\textsuperscript{16}Desai, Nithi., Loc.Cit.

\textsuperscript{17}“Green mail” Retrieved from http://www.investopedia.com/terms/g/greenmail.asp

\textsuperscript{18}Desai, Nithi., Loc.Cit.
C. JOINT VENTURES.

A joint venture is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity. In a joint venture (JV), each of the participants is responsible for profits, losses and costs associated with it. However, the venture has its own entity, separate from the participants' other business interests. A joint venture is the coming together of two or more businesses for a specific purpose, which may or may not be for a limited duration. The purpose of the joint venture may be for the entry of the joint venture parties into a new business, or the entry into a new market, which requires the specific skills, expertise, or the investment of each of the joint venture parties.20

D. DEMERGERS.

A demerger is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. It is the converse of a merger or acquisition. A demerger can take place through a spin-off by distributing or transferring the shares in a subsidiary, holding the business to company shareholders carrying out the demerger. The demerger can also occur by transferring the relevant business to a new company or business to which the company's shareholders are issued shares.21 Demergers can be undertaken for various business and non-business reasons, such as government intervention, by way of anti-trust law, or through decartelization.22

Spin off: It is the creation of an independent company through the sale or distribution of new shares of an existing business/division of a parent company. A spinoff is a type of divestiture. Businesses wishing to 'streamline' their operations often sell less productive or unrelated subsidiary businesses as spinoffs. The spun-off companies are expected to be worth more as independent entities than as parts of a larger business.23

\[(A-a) + (B-b) = A + B + C\], where \(A > a, B > b\) and \(C = a + b\): In this form, a small business is divested from the entity A and similarly, a small business b is divested

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21 Desai, Nithi, Loc.Cit.
from the entity B. The two divested businesses a and b are then combined to form a new entity C. This is generally called spin off.\textsuperscript{24}

E. Reverse Merger

Reverse Merger: It is a type of merger which is used by private companies to become publicly traded without resorting to an initial public offering. Initially, the private company buys enough shares to control a publicly traded company. The private company's shareholder then uses their shares in the private company to exchange for shares in the public company. At this point, the private company has effectively become a publicly traded one. With this type of merger, the private company does not need to pay the expensive fees associated with arranging an initial public offering. The problem, however, is the company does not acquire any additional funds through the merger and it must have enough funds to complete the transaction on its own.\textsuperscript{25}

For example, the new entity ICICI Bank, after the reverse merger of ICICI and ICICI Bank, comes out with its first operational results for the year (i.e. March 2002) signaling the dawn of a new era in the fast changing Indian financial sector. It marks the arrival of the first Universal Bank in the country.\textsuperscript{26}

2.3 Types of Mergers

Horizontal Mergers: Horizontal merger is a merger occurring between companies in the same industry. It is a business consolidation that occurs between firms operates in the same space, often as competitors offering the same goods or services. This merger is common in industries with fewer firms, as competition tends to be higher and the synergies and potential gains in market share are much greater for merging firms in such industries. This type of merger occurs frequently, because large companies attempts to create more efficient economies of scale. The amalgamation of Daimler-Benz and Chrysler is a popular example of a horizontal merger.\textsuperscript{27}

Vertical Mergers: Vertical merger refers to the combination of two entities at different stages of the industrial or production process. For example, the merger of a company engaged in the construction business with a company engaged in production of brick or steel would lead to vertical integration. Companies stand to gain on

\textsuperscript{24} Ray, Kamal Ghosh., op.cit.pp.7
\textsuperscript{25} 'Reverse Merger' retrieved from http://www.investopedia.com/terms/r/reversetakeover.asp
\textsuperscript{26} 'Reverse Merger And Merry Marriage', Retrieved from http://www.financialexpress.com/news/reverse-merger-and-merry-marriage/45391/0
\textsuperscript{27} 'Horizontal Merger', retrieved from http://www.investopedia.com/terms/h/horizontalmerger.asp
account of lower transaction costs and synchronization of demand and supply. Moreover, vertical integration helps a company move towards greater independence and self-sufficiency. The downside of a vertical merger involves large investments in technology in order to compete effectively.

Congeneric Mergers: These mergers happen between entities engaged in the same general industry and somewhat interrelated, but having no common customer-supplier relationship. A company uses this type of merger in order to use same sales and distribution channels their and to reach the customers of both businesses.  

Conglomerate Mergers: A conglomerate merger is a merger take place between two entities in unrelated industries. The principal reason for a conglomerate merger is utilization of financial resources, enlargement of debt capacity, and increase in the value of outstanding shares by increased leverage and earnings per share, and by lowering the average cost of capital. A merger with a diverse business also helps the company to foray into varied businesses without having to incur large start-up costs normally associated with a new business.

Cash Merger: In a typical merger, the merged entity combines the assets of the two companies and grants the shareholders of each original company shares in the new company based on the relative valuations of the two original companies. However, in the case of a ‘cash merger’, also known as a ‘cash-out merger’, the shareholders of one entity receives cash in place of shares in the merged entity. This is a common practice in cases where the shareholders of one of the merging entities do not want to be a part of the merged entity.

Triangular Merger: A triangular merger is often resorted to for regulatory and tax reasons. As the name suggests, it is a tripartite arrangement in which the target merges with a subsidiary of the acquirer. Based on which entity is the survivor after such merger, a triangular merger may be forward (when the target merges into the subsidiary and the subsidiary survives), or reverse (when the subsidiary merges into the target and the target survives).

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19 ibid, note 4, at p. 59  
2.4 Motives for Mergers and Amalgamations

The dominant rationale used to explain merger activity is that acquiring firms seek improved financial performance. The following motives are considered to improve financial performance:

- Economy of scale: This refers to the fact that the combined company can often reduce its fixed costs by removing duplicate departments or operations, lowering the costs of the company relative to the same revenue stream, thus increasing profit margins.

- Economy of scope: Economies of scope are conceptually similar to economies of scale. Whereas economies of scale for a firm primarily refers to reduction in the average cost (cost per unit) associated with increasing the scale of production for a single product type. It refers to lowering the average cost for a firm in producing two or more products. This implies that efficiencies primarily associated with demand-side changes, such as increasing or decreasing the scope of marketing and distribution, of different types of products.31

- Increased revenue or market share: Market share is the percentage of a market (defined in terms of either units or revenue) accounted for by a specific entity. This assumes that the buyer will absorb competitor and thus increase its market power (by capturing increased market share) to set prices.

- Cross-selling: Cross-selling is the action or practice of selling among or between clients, markets, traders, etc. or the action or practice of selling an additional product or service to an existing customer. This article deals exclusively with the meaning. In practice, businesses define cross-selling in many ways. Elements that might influence the definition include the size of the business, the industry sector it operates within and the financial motivations of those, required to define the term. For example, a bank buying a stock broker could then sell its banking products to the stock broker's customers, while the broker can sign up the bank's customers for brokerage accounts. Or, a manufacturer can acquire and sell complementary products.

- Synergy: It is the interaction of multiple elements in a system to produce an effect different from or greater than the sum of their individual effects. Synergy is the magic force that allows enhancing cost efficiencies of the new business. Synergy

31 'Economy of scope' retrieved from http://en.wikipedia.org/wiki/Mergers_and_acquisitions
takes the form of revenue enhancement and cost savings. For example, managerial economies such as the increased opportunity of managerial specialization. Another example is purchasing economies due to increased order size and associated bulk-buying discounts. Synergy can be calculated as below

\[ \Delta V = V_{AB} - (V_A + V_B) \]

\( V_A \) = refers to the positive gain (or synergy) from the merge/takeover

\( V_A \) = refers to the value of firm A

\( V_B \) = refers to the value of firm B

\( V_{AB} \) = refers to the value of A and B as a merged firm

Value of firm B to firm A =

\( V_B^* = \Delta V + V_B \)

\( V_B^* \) refer to the value of B plus the positive gain from the merge/takeover of firm B

- Taxation: A profitable company can buy a loss maker to use the target's loss as their advantage by reducing their tax liability. In the United States and many other countries, rules are in place to limit the ability of profitable companies to "shop" for loss making companies, limiting the tax motive of an acquiring company.

- Geographical or other diversification: This is designed to smooth the earnings results of a company, which over the long term smoothen the stock price of a company, giving conservative investors more confidence for investing in the company. However, this does not always deliver value to shareholders.

- Resource transfer: resources are unevenly distributed across firms (Barney, 1991) and the interaction of target and acquiring firm resources can create value either through overcoming information asymmetry or by combining scarce resources.

- Vertical integration: Vertical integration occurs when an upstream and downstream firm merges (or one acquires the other). There are several reasons for

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this to occur. One reason is to internalize an externality problem. A common example of such an externality is double marginalization. Double marginalization occurs when both the upstream and downstream firms have monopoly power and each firm reduces output from the competitive level to the monopoly level, creating two deadweight losses. Following a merger, the vertically integrated firm can collect one deadweight loss by setting the downstream firm's output to the competitive level. This increases profits and consumer surplus. A merger that creates a vertically integrated firm can be profitable. 

- Hiring: some companies use acquisitions as an alternative to the normal hiring process. This is especially common when the target is a small private company or is in the startup phase. In this case, the acquiring company simply hires ("acquires") the staff of the target private company, thereby acquiring its talent (if that is its main asset and appeal). The target private company simply dissolves and little legal issues are involved.

However, on an average, across the most commonly studied variables, acquiring firms' financial performance does not positively change as a function of their acquisition activity. Therefore, an additional motive for merger and acquisition that may not add shareholder value includes:

- Diversification: While this may hedge a company against a downturn in an individual industry it fails to deliver value, since it is possible for individual shareholders to achieve the same hedge by diversifying their portfolios at a much lower cost than those associated with a merger.

- Manager's hubris: Managerial hubris is the unrealistic belief held by managers in bidding firms that they can manage the assets of a target firm more efficiently than the target firm's current management. Managerial hubris is one reason why a manager may choose to invest in a merger that on average generates no profits. 

Manager's overconfidence about expected synergies from merger might results in overpayment for the target company.


• Empire-building: Empire-Building refers to the tendency of countries and nations to acquire resources, land, and economic influence outside of their borders in order to expand their size, power, and wealth. Managers have larger companies to manage and hence more power.

• Manager's compensation: In the past, certain executive management teams had their payout based on the total amount of profit of the company, instead of the profit per share, which would give the team a perverse incentive to buy companies in order to increase the total profit while decreasing the profit per share (which hurts the owners of the company, the shareholders).

2.5 Mergers and Amalgamations: Global Scenario

In today's globalized economy, competitiveness and competitive advantage have become the buzzwords for corporates around the world. Corporates worldwide have been aggressively trying to build new competencies and capabilities, to remain competitive and to grow profitably. In the USA, since the early 1900s, there have been six distinct waves of mergers and acquisitions, each with its distinct characteristics and outcomes, as per a BCG report released in July 2007 (based on a detailed analysis of more than 4,000 completed deals between 1992 and 2006 in USA). As per the report at the beginning of the twentieth century, there was a drive for market share, followed three decades later by a longer and more ambitious wave as companies connected together different elements of the value chain, from raw materials and production to distribution. The most recent wave, which started in 2004, after the internet bubble at the turn of the century and the subsequent downturn, is driven by consolidation motives. Since the early 1900s, there have been six distinct waves of M&A, each with unique characteristics and outcomes.

In figure: 2.5.1. We can see the six distinct merger waves that took place in the USA, there has been a remarkable increase in the number and value of deals over the six waves high lightened, this trend of increased mergers and acquisitions is due to various factors. The world economy underwent globalizations and liberal regulations in terms of trade and commerce which hugely contributed to the increased number of

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deals. At the beginning of the twentieth century, for example, there was a drive for market share, followed three decades later by a longer and more ambitious wave as companies connected together different elements of the value chain, from raw materials and production through to distribution. Today’s wave, which started in 2004, after the Internet bubble at the turn of the century and the subsequent downturn, is mainly about consolidation. Globalization by providing more liberal regulatory environments in certain sectors and unparalleled funds for M&A has facilitated this trend. 

The first wave was marked by the market consolidations where the number of deals was also very low. The number of deals was below 5000 while the value was lower than US$ 500 billion.\textsuperscript{38} During this period, small firms with little market share consolidated with similar firms to form large powerful institutions that dominated their markets. Many of the corporate giants in the US, like General Electric, Eastman Kodak, American Tobacco and DuPont were formed during the first wave. It is said that approximately seventy one important oligopolistic or near competitive industries were converted into near monopolies by mergers. This restructuring of the American industry remained in steady state for the next fifty years. One of the major short run factors that sparked the ‘great merger movement’ was the desire to keep prices high. During this period, when the demand declined, firms found profitable to collude and manipulate supply to counter any changes in demand for the good. This type of cooperation led to widespread horizontal integration amongst firms of the era. In the long run, in order to keep costs low, it was advantageous for firms to merge and reduce their transportation costs, thus producing and transporting from one location rather than various sites of different companies as in the past.

In addition, technological changes prior to the merger movement within companies increased the efficient size of plants with capital intensive assembly lines allowing for economics of scale. The merger movement during this period basically consisted of horizontal mergers, which resulted in high concentration in many industries, including heavy manufacturing industries. This merger movement of the turn of century accompanied major changes in infrastructure and production technologies. It followed

\textsuperscript{38} ibid. pp. 8-9
the completion of the transcontinental railroad system, the advent of electricity and the increased use of coal.\textsuperscript{39}

In the second wave the number of deals went up and was marked up by vertical integration, i.e. mergers between firms engaged in the similar kind of business but at different stages of production. However the number of deals and value of deals did not register significant change over the previous period.\textsuperscript{40} It is estimated that during this wave, characterized by the period of economic growth and stock market boom, about 12,000 firms disappeared. In industries dominated previously by one giant firm, the mergers led to the formation of two companies. In the manufacturing sector, most mergers either resulted in small market share increases for the merging firms or in vertical integration. This merger wave contributed to oligopolistic structure in many industries. The public utilities and banking industry were involved in the merger activity to a greater extent during this period. During this period, about 60\% of the mergers occurred in the fragmented food processing, chemicals and mining sectors. A large portion of the mergers in the 1920s represented product extension mergers, as in the case of IBM, General Foods and Allied Chemicals, market extension mergers in food retailing, department stores, motion picture theatres and vertical mergers in the mining and metal industries. It collapsed due to the stock market crash and depression during 1929-1930.\textsuperscript{41}

The third wave involved conglomerates that are mergers between totally unrelated businesses. Also the number of completed deals crossed 5000 mark while the value of deals was between US$ 500 billion to 1000 billion.\textsuperscript{42} During this period, mostly unrelated mergers took place which were basically aimed at achieving growth through diversification into new product markets. Among the Fortune 500 companies, the percentage of unrelated business category increased from about 4\% in 1949 to about 9\% in 1960s. The third wave resulted in a massive shift in the business composition of US firms towards greater diversification. This merger period is known as the ‘period of conglomerate merger movement’. The conglomerate firms were diversifying to avoid sales and profit instability, adverse growth developments, adverse competitive shifts and technological obsolescence.\textsuperscript{43}

\textsuperscript{39} Kumar, B Rajesh ,Op.Cit.,pp.2-4
\textsuperscript{40} Boston Consulting Groups' (BCG) research report, (2007), Loc.Cit.
\textsuperscript{41} Kumar, B Rajesh ,Op.Cit.,pp.2-4
\textsuperscript{43} Kumar, B Rajesh ,Op.Cit.,pp.2-4
The fourth wave was associated with leveraged finance where number of deals increased tremendously, almost doubled. Leveraged finance is related to funding a company with large proportions of debt and is considered a risky proposition. The present debt crisis has its roots in leverage; one can assume that the seeds which resulted in the present deep rooted credit crises were sown almost a decade back. There was a significant jump in the number of deals and the value of deals that occurred in the period. Approximately 10000 to 15000 deals took place in this period.\textsuperscript{44} The value of deals on the other hand jumped up to US$ 1500 billion. This period witnessed the fourth merger wave of the twentieth century. The fourth wave was unique compared with the three prior waves. It specifically featured the hostile takeover and the corporate raider. In addition, in the 1980s, the junk bond market grew into a tool of high finance whereby bidders for corporations obtained access to billions of dollars to finance raids on some of the largest, most established corporations in the US.

The period also featured an unprecedented volume of mergers and acquisitions compared with the previous periods. This period also witnessed the rapid growth and decline of the leveraged buyout (LBO)—the use of debt capital to finance a buyout of the firm’s stock. Mergers and acquisitions in this wave were concentrated in such service industries as commercial and investment banking, finance, insurance, wholesale, retail, broadcasting and healthcare, and in the natural resource area.\textsuperscript{45}

\textsuperscript{44} Boston Consulting Groups' (BCG) research report, (2007), Loc.Cit.
\textsuperscript{45} Kumar, B Rajesh ,Op.Cit.,pp.2-4
Figure 2.5.1: Exhibits the Six waves of M&A over the past century in USA with number of transactions and deal value.

Source: Boston Consulting Groups’ research report, The Brave new world of M&A – How to create value from Mergers and Acquisitions, July 2007

The fifth wave was the period where the number of deals completed, peaked to the maximum. During this time span the Internet bubble took place which was a period when the stock market in western nations surged dramatically due to rapid growth in the field relating to the internet sector. It was a speculative bubble roughly covering the period from 1998 to 2001. The number of deals went above 30000, while the value of deals was around US$ 3500 billion. The fifth wave focused on core competencies as the source of competitive advantage. It was characterized by the advancement of new technologies, globalization of products, services and capital markets. The economic environment saw the emergence of supranational trading blocs, such as the Single Market of the European Union, North Atlantic Free Trade Association, which includes the US, Canada and Mexico, and creation of the World Trade Organization which facilitated lowering of barriers and capital mobility.

The sixth and final wave saw the number of completed deals decline marginally where the firms undertook consolidations in order to restructure, establish and regroup just to face the enhanced competition. The number of deals dropped to 25000 while

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47 Kumar, B Rajesh ,Op.Cit.,pp.2-4
the value of deals also went down to about US$ 3000 billion. During this sixth wave, (especially from 2005 to 2007) were characterized by an explosion of highly leveraged buyouts and private equity investments (i.e., takeovers financed by limited partnerships) and the proliferation of complex securities collateralized by pools of debt and loan obligations of varying levels of risk. Much of the financing of these transactions, as well as mortgage-backed security issues, took the form of syndicated debt (i.e., debt purchased by underwriters for resale to the investing public). The syndication process disperses such debt among many different investors. The issuers of the debt discharge much of the responsibility for the loans to others (except where investors have recourse to the originators if default occurs within a stipulated time). Under such circumstances, lenders have an incentive to increase the volume of lending to generate fee income by reducing their underwriting standards to accept riskier loans. After such loans are sold to others, loan originators are likely to reduce their monitoring. These practices, coupled with exceedingly low interest rates made possible by a world awash in liquidity, contributed to excessive lending and encouraged acquirers to overpay significantly for target firms.

Table 2.5.1: below exhibits the name of the top ten deals of merger and acquisitions around the world along with the name of acquirer companies and the target companies which have been acquired by the acquirer companies in the relevant year. It also indicates the deal value between the acquirer company and the target company in terms of US$ and EUR (inbil.). The biggest deal found in between the Vodafone Air Touch PLC and Mannesmann AG, where the British multinational telecommunications company Vodafone Air Touch PLC (Acquirer) acquired the German based company Mannesmann AG (Target). Mannesmann was acquired by Vodafone Group Plc. and completed the acquisitions process in 2000 in a tax-free stock exchange of 53.7 Vodafone shares for each share of Mannesmann. This was a controversial takeover as never before in Germany had a large company been acquired by a foreign owner. This was a hostile takeover but the merger was backed in a private deal between Mannesmann management and Vodafone. The deal value was 202.8 billion US$ which is the highest transactions value till 19 January 2012. The table also displays the second most acquisitions deals; the Bidder Company

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America Online Inc acquired the Time Warner (Target) company with the transactions value 164.7 billion US$. Time Warner Inc. (formerly AOL Time Warner, stylized as Time Warner) is an American multinational media corporation headquartered in the Time Warner Center in New York City. As of mid-2010, it was the world's second largest media and entertainment conglomerate in terms of revenue (behind The Walt Disney Company), as well as the world's largest media conglomerate.

The third biggest acquisition in terms of deal value was the Philip Morris Intl Inc acquired by Shareholders with the deal value 107.6 billion US$. Altria Group, Inc. (previously named Philip Morris Companies Inc.) is a corporate business based in Henrico County, Virginia, United States of America and is the parent company of Philip Morris USA, John Middleton, Inc., U.S. Smokeless Tobacco Company, Inc., Philip Morris Capital Corporation, and Chateau Ste. Michelle Wine Estates. It is one of the world's largest tobacco corporations. The fourth acquisition was between the RFS Holdings BV and ABN-AMRO Holding NV, where the ABN-AMRO Holding NV acquired by the RFS Holdings BV with the deal value 98.2 US$. ABN AMRO Group N.V. is a Dutch bank group, consisting of ABN AMRO Netherlands, ABN AMRO Private Banking, the International Diamond and Jewellery Group, and Fortis Bank Netherlands.

The fifth biggest merger was held in the year 1999 between the Pfizer, Inc and Warner-Lambert Co. Pfizer, Inc. is an American multinational pharmaceutical corporation headquartered in New York City, with its research headquarters in Groton, Connecticut, United States. It is one of the world's largest pharmaceutical company by revenues. The Warner-Lambert Co. manufactures and markets pharmaceutical, consumer health care, and confectionery products, including such popular brands as Listerine antiseptic mouthwash, Chiclets gum, Halls lozenges, Certs mints, Rolaids antacids, and Schick razors. USA. The deal value was between 89.2 billion US$. In the year 1998 the Mobil corp acquired by Exxon corp. with the transaction value 78.9 billion US$. It is sixth largest merger deal in the world. The merger which is at the seventh place in world top ten acquisitions was between the GlaxoWellcome PLC and Smithkline Beecham PLC with the transaction value 76 billion US$. GlaxoSmithKline plc (GSK) is a British multinational pharmaceutical, biologics, vaccines and consumer healthcare company headquartered in London,
United Kingdom. It is the world's fourth-largest pharmaceutical company measured by 2009 prescription drug sales (after Pfizer, Novartis, and Sanofi).

The eighth merger between the Royal Dutch Petroleum Co and Shell Transport & Trading Co occurred in the year 2004 with the transactions value of 74.6 billion US$. In the year 2006, the AT&T Inc acquired Bell South Corp with the transaction value 72.7 billion US$. BellSouth Corporation is an American telecommunications holding company based on Atlanta, Georgia. BellSouth was one of the seven original Regional Bell Operating Companies after the U.S. Department of Justice forced the American Telephone & Telegraph Company to divest itself of its regional telephone companies on January 1, 1984. AT&T Inc. is an American multinational telecommunications corporation headquartered in whitacre Tower, downtown Dallas, Texas. AT&T is the largest provider both of mobile telephony and of fixed telephony in the United States; it is the ninth biggest merger in the world in terms of deal value.

The last and the tenth acquisition in the table, displayed the acquisitions of Citicorp by Travelers Group Inc with the transactions value of US$ 72.6. Citigroup Inc. or Citi is an American multinational financial services corporation headquartered in Manhattan, New York City, New York, United States. Citigroup was formed from one of the world's largest mergers in history by combining the banking giant Citicorp and financial conglomerate Travelers Group, at the time of merger, was a diverse group of financial concerned.
Table 2.5.1: Exhibits the top deals (Largest Mergers and Acquisitions Transactions)*Worldwide

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquirer**</th>
<th>Target**</th>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. USD)</td>
</tr>
<tr>
<td>1</td>
<td>1999</td>
<td>Vodafone Air Touch PLC</td>
<td>Mannesmann AG</td>
<td>202.8</td>
</tr>
<tr>
<td>2</td>
<td>2000</td>
<td>America Online Inc</td>
<td>Time Warner</td>
<td>164.7</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>Shareholders</td>
<td>Philip Morris Intl Inc</td>
<td>107.6</td>
</tr>
<tr>
<td>4</td>
<td>2007</td>
<td>RFS Holdings BV</td>
<td>ABN-AMRO Holding NV</td>
<td>98.2</td>
</tr>
<tr>
<td>5</td>
<td>1999</td>
<td>Pfizer Inc</td>
<td>Warner-Lambert Co</td>
<td>89.2</td>
</tr>
<tr>
<td>6</td>
<td>1998</td>
<td>Exxon Corp</td>
<td>Mobil Corp</td>
<td>78.9</td>
</tr>
<tr>
<td>7</td>
<td>2000</td>
<td>GlaxoWellcome PLC</td>
<td>SmithKline Beecham PLC</td>
<td>76.0</td>
</tr>
<tr>
<td>8</td>
<td>2004</td>
<td>Royal Dutch Petroleum Co</td>
<td>Shell Transport &amp; Trading Co</td>
<td>74.6</td>
</tr>
<tr>
<td>9</td>
<td>2006</td>
<td>AT&amp;T Inc</td>
<td>BellSouth Corp</td>
<td>72.7</td>
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<tr>
<td>10</td>
<td>1998</td>
<td>Travelers Group Inc</td>
<td>Citicorp</td>
<td>72.6</td>
</tr>
</tbody>
</table>


* Since 01 January 1985 and as of 19 January 2012,

** or merger partner

Figure (2.5.2) displays the overall Merger and Acquisitions announced worldwide from 1985 to 2013. The Mergers and Acquisitions for the year 1985 were very low. The number of transactions remained below 5,000 while the value of transactions was lower than US$ 500. The year 2007 marked the maximum mergers and acquisitions deals, which were approximately 50,000 and the transactions value found nearly to US$50000 approximately. The recent quarter for the year 2013 signaling the positive sign for the merger and acquisitions, the number of transactions for the three month was less than 10000 and the deal's value less than US$ 1000 approximately.
Figure 2.5.2: Announced Mergers and Acquisitions: World Wide 1985-2013*

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013

Table 2.5.2: below reveals the name of the top ten deals of merger and acquisitions around Europe along with the names of the acquirer companies and the target companies which have been acquired by the acquirer companies in the relevant year. It also indicated the deal value between the acquirer company and the target company in terms of US$ and EUR ( inbil.).

Table 2.5.2: Exhibits the top deals (Largest M&A Transactions)* Europe

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquirer**</th>
<th>Target**</th>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. USD)</td>
</tr>
<tr>
<td>1</td>
<td>1999</td>
<td>Vodafone AirTouch PLC</td>
<td>Mannesmann AG</td>
<td>202.8</td>
</tr>
<tr>
<td>2</td>
<td>2007</td>
<td>Shareholders</td>
<td>Philip Morris Intl Inc</td>
<td>107.6</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>RFS Holdings BV</td>
<td>ABN-AMRO Holding NV</td>
<td>98.2</td>
</tr>
<tr>
<td>4</td>
<td>2000</td>
<td>GlaxoWellcome PLC</td>
<td>SmithKline Beecham PLC</td>
<td>76.0</td>
</tr>
<tr>
<td>5</td>
<td>2004</td>
<td>Royal Dutch Petroleum Co</td>
<td>Shell Transport &amp; Trading Co</td>
<td>74.6</td>
</tr>
<tr>
<td>6</td>
<td>2006</td>
<td>Gaz de France SA</td>
<td>Suez SA</td>
<td>60.9</td>
</tr>
<tr>
<td>7</td>
<td>1999</td>
<td>Vodafone Group PLC</td>
<td>AirTouch Communications Inc</td>
<td>60.3</td>
</tr>
<tr>
<td>8</td>
<td>2004</td>
<td>Sanofi-Synthelabo SA</td>
<td>Aventis SA</td>
<td>60.2</td>
</tr>
<tr>
<td>9</td>
<td>2008</td>
<td>InBev NV</td>
<td>Anheuser-Busch Cos Inc</td>
<td>52.2</td>
</tr>
<tr>
<td>10</td>
<td>1999</td>
<td>Total Fina SA</td>
<td>Elf Aquitaine</td>
<td>50.1</td>
</tr>
</tbody>
</table>


*Since 01 January 1985 and as of 19 January 2012

** or merger partner
Figure 2.5.3 exhibit the overall Mergers and Acquisitions (M&As) announced in Europe during 1995-2013, where the consolidation was low in 1995, the number of transactions were less than 12000 approximately, with deal value less than 1200 (in bil.EUR) approximately. The highest Merger and Acquisitions were in the year 2007, the number of transactions were less than 20000 and deals value was less than 2000 (in bil.EUR) approximately. The consolidation deals in the year 2012 was less than 16000 and deal value was less than 1600 approximately.

Figure 2.5.3: Announced Mergers and Acquisitions: Europe 1995-2013

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013

Table 2.5.3 below reveals the name of the top ten deals of merger and acquisitions in the Asia Pacific region along with the name of acquirer companies and the target companies which were acquired by the acquirer companies in the relevant year. It also indicates the deal value between the acquirer company and the target company in terms of US$ and EUR (in bil.).
Table 2.5.3: Exhibits the top deals (Largest M&A Transactions)* Asia-Pacific

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquirer**</th>
<th>Target**</th>
<th>Transaction Value (inbil. USD)</th>
<th>Transaction Value (inbil. EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2000</td>
<td>Pacific Century CyberWorks Ltd</td>
<td>Cable &amp; Wireless HKT</td>
<td>37.4</td>
<td>38.4</td>
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<tr>
<td>2</td>
<td>2000</td>
<td>China Telecom Hong Kong Ltd</td>
<td>Beijing Mobile, 6 others</td>
<td>34.2</td>
<td>39.7</td>
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<tr>
<td>3</td>
<td>2007</td>
<td>BHP Billiton Ltd</td>
<td>BHP Billiton Ltd</td>
<td>26.4</td>
<td>18.1</td>
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<tr>
<td>4</td>
<td>2008</td>
<td>China Unicom Ltd</td>
<td>China Netcom Grp(HK)Corp Ltd</td>
<td>25.4</td>
<td>16.4</td>
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<tr>
<td>5</td>
<td>2008</td>
<td>Westpac Banking Corp</td>
<td>St George Bank Ltd</td>
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<td>11.6</td>
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<tr>
<td>6</td>
<td>2007</td>
<td>Shareholders</td>
<td>SK Corp-Petrochemical Business</td>
<td>17.0</td>
<td>12.4</td>
</tr>
<tr>
<td>7</td>
<td>2007</td>
<td>Wesfarmers Ltd</td>
<td>Coles Group Ltd</td>
<td>15.3</td>
<td>11.3</td>
</tr>
<tr>
<td>8</td>
<td>2006</td>
<td>Kemble Water Ltd</td>
<td>Thames Water PLC</td>
<td>14.9</td>
<td>11.9</td>
</tr>
<tr>
<td>9</td>
<td>2008</td>
<td>Shining Prospect Pte Ltd</td>
<td>Rio Tinto PLC</td>
<td>14.3</td>
<td>9.7</td>
</tr>
<tr>
<td>10</td>
<td>2006</td>
<td>Cemex SAB de CV</td>
<td>Rinker Group Ltd</td>
<td>14.2</td>
<td>10.6</td>
</tr>
</tbody>
</table>


* Since 01 January 1985 and as of 19 January 2012

** or merger partner

Figure 2.5.4: depicts the merger and acquisitions announced in Asia Pacific region from 1995 to 31st March, 2013. For the year 1995 the number of transactions were below 4000 and the deal's value was less than 300 (in bil,.) US$. Year 2007 and 2010 showed the highest deals, approximately 12000 and the transaction value was 800 (in bil,.) US$ approximately. Year 2012 and quarter of 2013, the deal transactions were above 10000 and 2000 with transaction value less than 700(in bil,.) US$ and 200(in bil,.) US$ approximately.
Figure 2.5.4: Announced Mergers and Acquisitions: Asia Pacific, 1995-2013

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013

Table 2.5.4 displays the names of the top ten deals of merger and acquisitions in the South America region along with the names of acquirer companies and the target companies which were acquired by the acquirer companies in the relevant year. It also indicates the deal values between the acquirer company and the target company in terms of US$ and EUR (in bil.).

Table 2.5.4: Top ten deals (Largest M&A Transactions)* South America

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquiror**</th>
<th>Target**</th>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. USD)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. EUR)</td>
</tr>
<tr>
<td>1</td>
<td>2006</td>
<td>Cia Vale do Rio Doce SA</td>
<td>Inco Ltd</td>
<td>17.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>13.5</td>
</tr>
<tr>
<td>2</td>
<td>1999</td>
<td>Repsol SA</td>
<td>YPF SA</td>
<td>13.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>12.4</td>
</tr>
<tr>
<td>3</td>
<td>2008</td>
<td>BolsaBrasileira de Mercadorias</td>
<td>Bovespa Holding SA</td>
<td>10.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6.5</td>
</tr>
<tr>
<td>4</td>
<td>2000</td>
<td>Telefonica SA</td>
<td>Telecommunicacoes de Sao Paulo</td>
<td>10.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10.0</td>
</tr>
<tr>
<td>5</td>
<td>2010</td>
<td>Telefonica SA</td>
<td>Brasilcel NV</td>
<td>9.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7.5</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>Bancoltau Holding Financeira</td>
<td>Unibanco Holdings SA</td>
<td>8.5</td>
</tr>
<tr>
<td>---</td>
<td>-------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>------</td>
</tr>
<tr>
<td>7</td>
<td>2004</td>
<td>Ambev</td>
<td>John Labatt Ltd</td>
<td>7.8</td>
</tr>
<tr>
<td>8</td>
<td>2010</td>
<td>Sinopec Group</td>
<td>Repsol YPF Brasil SA</td>
<td>7.1</td>
</tr>
<tr>
<td>9</td>
<td>2010</td>
<td>Bridas Corp</td>
<td>Pan American Energy LLC</td>
<td>7.1</td>
</tr>
<tr>
<td>10</td>
<td>1997</td>
<td>Investor group</td>
<td>CorreoArgentino SA</td>
<td>6.2</td>
</tr>
</tbody>
</table>


* Since 01 January 1985 and as of 19 January 2012

** or merger partner

Figure 2.5.5 displays the merger and acquisitions in the region of South America during the period of 1995 to 2013, the number of transactions were less than 600 and the value of transactions were below 75 billion US$. The merger and acquisitions moved up approximately 1500 in the year 2007. The highest merger and acquisitions deals were in the year 2011, which was near to 1800 number of transactions with the value less than 225 billion US$. For the year 2012 it went below 1600 transactions and value was less than 200 billion US$.

Figure 2.5.5: Announced Mergers and Acquisitions: South America, 1995-2013*

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013
Table 2.5.5 shows the names of the top ten deals of merger and acquisitions in the South East Asia region along with the names of acquirer companies and the target companies which were acquired by the acquirer companies in the relevant year. It also indicates the deal value between the acquirer company and the target company in terms of US$ and EUR (in bil.)

Table 2.5.5: Top ten deals (Largest M&A Transactions)*South East Asia

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquiror**</th>
<th>Target**</th>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. USD)</td>
</tr>
<tr>
<td>1</td>
<td>2008</td>
<td>Shining Prospect Pte Ltd</td>
<td>Rio Tinto PLC</td>
<td>14.3</td>
</tr>
<tr>
<td>2</td>
<td>2007</td>
<td>Singapore Investment Authority</td>
<td>UBS AG</td>
<td>9.8</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>Shareholders</td>
<td>TM International SdnBhd</td>
<td>9.0</td>
</tr>
<tr>
<td>4</td>
<td>2001</td>
<td>SingTel</td>
<td>Cable &amp; Wireless Optus Lt</td>
<td>8.5</td>
</tr>
<tr>
<td>5</td>
<td>2007</td>
<td>Investor Group</td>
<td>Alinta Ltd</td>
<td>7.5</td>
</tr>
<tr>
<td>6</td>
<td>2010</td>
<td>Investor Group</td>
<td>Plus Expressways Bhd</td>
<td>7.5</td>
</tr>
<tr>
<td>7</td>
<td>2008</td>
<td>Singapore Investment Authority</td>
<td>Citigroup Inc</td>
<td>6.9</td>
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<td>8</td>
<td>2001</td>
<td>DBS Group Holdings Ltd</td>
<td>Dao Heng Bank Group</td>
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<td>2001</td>
<td>UOB</td>
<td>Overseas Union Bank Ltd</td>
<td>5.5</td>
</tr>
<tr>
<td>10</td>
<td>2005</td>
<td>Shareholders</td>
<td>Sterling Energy-Philippine Ast</td>
<td>5.4</td>
</tr>
</tbody>
</table>


* since 01 January 1985 and as of 19 January 2012

** or merger partner

Figure 2.5.6 demonstrates the merger and acquisitions occurred in South East Asia during the year 1995 to 2013. It can be seen that the mergers in the year 1995 were less than 1500 with transactions value less than 70 billion US$. The highest numbers of transactions were in the year 2010 which were about 3000 and transactions value below US$ 140 billion. For the year 2012 the merger and acquisitions remained less than 2500 and transactions value more than US$ 120 billion approximately.
Figure 2.5.6: Announced Mergers and Acquisitions: South East Asia, 1995-2013

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013

Table 2.5.6 exhibits the names of the top ten deals of merger and acquisitions in the North America space region along with the names of acquirer companies and the target companies were acquired by the acquirer companies in the relevant year. It also indicates the deal value between the acquirer company and the target company in terms of US$ and EUR (in bil.)

Table 2.5.6: Top ten deals (Largest M&A Transactions)*North America

<table>
<thead>
<tr>
<th>Rank</th>
<th>Year</th>
<th>Acquiror**</th>
<th>Target**</th>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(inbil. USD)</td>
</tr>
<tr>
<td>1</td>
<td>2000</td>
<td>America Online Inc</td>
<td>Time Warner</td>
<td>164.7</td>
</tr>
<tr>
<td>2</td>
<td>1999</td>
<td>Pfizer Inc</td>
<td>Warner-Lambert Co</td>
<td>89.2</td>
</tr>
<tr>
<td>3</td>
<td>1998</td>
<td>Exxon Corp</td>
<td>Mobil Corp</td>
<td>78.9</td>
</tr>
<tr>
<td>4</td>
<td>2006</td>
<td>AT&amp;T Inc</td>
<td>BellSouth Corp</td>
<td>72.7</td>
</tr>
<tr>
<td>5</td>
<td>1998</td>
<td>Travelers Group Inc</td>
<td>Citicorp</td>
<td>72.6</td>
</tr>
<tr>
<td>6</td>
<td>2001</td>
<td>Comcast Corp</td>
<td>AT&amp;T Broadband &amp; Internet Svcs</td>
<td>72.0</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>Pfizer Inc</td>
<td>Wyeth</td>
<td>67.3</td>
</tr>
<tr>
<td>---</td>
<td>------</td>
<td>------------</td>
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</tr>
<tr>
<td>8</td>
<td>1998</td>
<td>SBC Communications Inc</td>
<td>Ameritech Corp</td>
<td>62.6</td>
</tr>
<tr>
<td>9</td>
<td>1998</td>
<td>Nations Bank Corp, Charlotte, NC</td>
<td>BankAmerica Corp</td>
<td>61.6</td>
</tr>
<tr>
<td>10</td>
<td>1999</td>
<td>Vodafone Group PLC</td>
<td>AirTouchCommunicationsInc</td>
<td>60.3</td>
</tr>
</tbody>
</table>


* Since 01 January 1985 and as of 19 January 2012

** or merger partner

Figure 2.5.7 exhibits the merger and acquisitions occurred in North America from 1985 to 2013 which clearly indicated the increasing trends of merger. The merger and acquisitions for the year 1985 were very low numbers of transactions i.e. 3000 approximately. In the year 1998, the merger and acquisitions went up to the highest point which is less than 18000 transactions and the transactions value below US$ 2500 billions. It can be seen that the merger and acquisitions went also high in the period of recession, beginning around 17000 number and transaction value below US$ 2500 billions. For the recent year 2012, the number of transactions declined to more than 12000 and transactions value below US$ 2000 billions approximately.

**Figure 2.5.7: Announced Mergers and Acquisitions: North America, 1985-2013**

In the recent times cross border acquisitions have accelerated at a brisk pace where firms are looking to consolidate and restructure in order to meet the challenges of the globalised world. In the beginning of 2011, with many businesses emerging from the global downturn, strategic growth rather than cost-cutting and mere survival has come to the fore again. For those PHBs (Privately Held Business) inclined to make acquisitions, some 66 per cent say that one of the key drivers behind their growth plans is the desire to build scale: only 48 per cent cited this reason in 2010 (see figure 2.5.8). And 66 per cent also found access to new markets compared to 57 percent last year.\textsuperscript{50} The PHBs make acquisition derived from acquiring new technology 46 percent in 2011 which was 38 percent in 2010. However, acquisitions derived from lower cost operation improved by 15 percent and moved to 46 percent in 2011 as compared to 31 percent in 2010.

**Figure 2.5.8:** Key drivers behind acquisition plans for average percentage of businesses globally.

![Chart showing key drivers behind acquisition plans](chart.png)

**Source:** Grant Thornton IBR 2011

Figure: 2.5.9 shows that the Cross-border deals set to rose, whilst domestic acquisitions remained the focus of acquisitive growth for many businesses (84%) globally, the desire to make a cross-border acquisition became increasingly prominent. The global expectation of cross-border M&A would drive acquisitive

growth increased by 56 percent since 2008 and 18 percent from 2012 to 2013 alone. Whilst overall the survey results indicated that some businesses may be holding back on committing to acquisitions in the next three years, there is no doubt that many of those that will be considering an acquisition will be looking overseas to facilitate their growth. Figure 2.5.9 indicated the increased markets which are indicating overseas percentage of business planning for Mergers or Acquisitions over the next three years. According to the most recent report Grant Thornton IBR (2013), The strong position of Yen led to unprecedented interest in cross-border deals for Japanese firms. The impact of the Yen devaluing may affect pricing but not appetite, as domestic opportunities remain scarce.” by Kawamura, Yoshi.

Figure 2.5.9: Mature markets increasingly looking overseas percentage of businesses planning a Mergers or Acquisitions over the next three years.

Source: Grant Thornton IBR 2013

- DOMESTIC ACQUISITION
- CROSS-BORDER ACQUISITION

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The Grant Thornton International Business Report (IBR) is a quarterly survey of 3,500 senior executives in listed and privately-held businesses all over the world. Launched in 1992 in nine European countries the report now surveys 13,000 businesses leaders in 44 economies on an annual basis providing insights on the economic and commercial issues affecting companies globally. The data in this report are drawn from 12,156 interviews with business leaders conducted between January and December 2012.

52 Ibid.
In the light of Grant Thornton report (2013), the merger and acquisitions have a great importance for the next three years for the region around the world. The regional highlights are as follows:

**In North America**: North American interest in growing through a domestic acquisition remains healthy with 88% expecting a domestic deal. However, what is fascinating is the escalation of the interest in cross-border acquisitions. Over the past four years, both US (56% increases) and Canadian (67% increase) respondents have shown a considerable rise in the expectation that cross-border acquisitions will underpin their acquisitive growth.⁵³

**Europe**: There is less emphasis on the importance of domestic acquisitions to drive acquisitive growth amongst European businesses (71%), as companies from this region continue to show an increasing desire to drive growth through a cross border acquisition (44%). Spain (61%) is the country where businesses are most fervent about future cross-border M&A activity whilst, in contrast, German businesses have increased their support for domestic acquisitions (11% year on year increase). UK and Irish companies remained focused on domestic acquisitive growth (84%) but with 33% effecting their M&A activity to be cross-border, UK and Irish corporates remained keen global acquirers.⁵⁴

**BRICS**: (Brazil, Russia, Indian, China and South Africa) countries (87%) continued to place significant importance on making acquisitions within their own borders with China (90%) leading that trend. However, the BRICS regions mid market respondents are now showing a greater interest in overseas acquisitive growth with an annual increase of 20%. The continuous increase in appetite for cross-border acquisitions from countries such as Russia (increase of 117%) and China (81% increase), emphasizes the development and growing financial strength of mid-market companies within these countries that now have the ability and interest in sourcing growth internationally.⁵⁵

**Asia Pacific**: The results from India (59% increase) illustrate that the recent economic slowdown and political and economic issues still to be resolved appear to be impacting on where businesses seek acquisitions with a greater focus on overseas opportunities. **Japanese** respondents‘ 50% increase in interest in cross border

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⁵³ ibid.
⁵⁴ ibid.,pp.3
⁵⁵ ibid.
acquisitive growth coupled with their high expectation of acquisitive growth being made through domestic acquisitions (91%) only further indicates how important acquisitions are to Japanese businesses seeking growth Singapore (86%) and the UAE (66%) are two country’s interested in growing through cross border acquisition. Australian respondents (94%; an increase year on year of 25%) shows support for domestic targets as the focus of their acquisition strategy.\textsuperscript{56}

According to the Bartels, Kai, Grant Thornton Germany (2013), “Although not at pre-crisis level, private German companies continue to generate a decent level of profits. With significant cash resources behind them we are optimistic for an increase in M&A activity in 2013.” A survey has been conducted by International Business report (IBR) which indicated the interest of the corporate around the region (see figure\textit{2.5.10}). The results of the survey show that 28% of businesses across the globe expect to be participating in M&A activity in the next three years. Whilst the merger and acquisitions activity decrease in comparison to 2012, the results remain above those at the depths of the global down-turn in 2010. It appears that with many key global and regional economic issues still to be resolved, there is a more subdued outlook for global M&As activity compared to the apparent optimism shown last year.\textsuperscript{57}

\textbf{Figure 2.5.10:} Interest in M&As Activity Percentage of Businesses Planning to Grow through Acquisition over the next three years.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2.5.10.png}
\caption{Interest in M&As Activity Percentage of Businesses Planning to Grow through Acquisition over the next three years.}
\end{figure}

\textit{Source:} Grant Thornton IBR 2013

\textsuperscript{56} Ibid, pp.4
\textsuperscript{57} Ibid, pp.5
North America: Businesses in Canada and the US continue to be as keen on M&A as they were last year with this region remaining the most supportive M&A activity. 37% of respondents expect to grow through acquisition in the next three years.

Europe: European companies continue to be less enthusiastic about M&A than their North American counterparts, although there remains a strong expectation for M&A activity to facilitate growth in the Netherlands (55%) and France (31%), whilst notably German, UK and Irish respondents say they are less likely to undertake in M&A.58

BRICS: The BRICS region's respondents have historically been the most enthusiastic when forecasting future M&A activity. However, over the past two years, that desire appears to have been stifled by global economic events and their responses are now more aligned with the rest of the world (27%).59

Rest of the world: From the developing and high growth markets, it is Latin American businesses that have the highest expectations of their future growth being driven by M&A (31%). Noticeably it is Australian respondents whose opinions have been impacted the least by recent global events, with their survey results remaining relatively consistent over the past three years (28%).60 According to the Khanna, Munesh, Grant Thornton India (2013) in the light of merging activity "With the Government now demonstrating policy initiatives and addressing some of the foreign investment deterrents, there are expectations of an increase in M&A activity in 2013, with private equity exits and investments at the forefront."61

In terms of financial growth, whilst mergers remains a key growth strategy, the ability to finance such growth in the current financing market potentially impact on respondents’ views on the likelihood of transacting in the short term. When asked how they expect to finance their growth strategies, it is notable that bank finance slipped to 48% of respondents from 53% last year. On the contrary, the IPO funding option increased by 40% year on year with Polish respondents showing the greatest appetite for raising money through the public market (28%). As the private equity (PE) market continues to expand globally, it is notable to see Brazilian business, the most expectant to raise PE funds (47%) to fund their growth, which is unsurprising

58 Ibid.
59 Ibid.
60 Ibid.
61 Ibid, pp. 8
considering the increasing number of PE firms now present in South America.\(^{62}\) The rationales behind the acquisition are most likely similar year to year. Accessing geographical markets (65%) remains the main motivation to participate in M&A and this has increased in importance this year. French respondents (77%) put the most emphasis on using merger to access new markets. This further illustrates that for well managed and funded businesses merger remains the quickest and most effective way to gain a footprint and build scale in new geographies.

However the Exit perceptions give you an idea about Business owners is often reticent about disclosing their long term ownership plans. Figure (2.5.11) gives an idea to sell of business around the world in terms of percentage. This year’s results illustrate this once more globally, only 8% of businesses stating that they foresee an exit over the next three years, the lowest level since 2008. This decrease indicates a reaction to a turbulent 2012 and maybe a reflection of business owner’s views that they may not be able to attract the level of interest or price acceptable to them.\(^{63}\)

**Figure 2.5.11:** exhibits the businesses most likely to sell percentage of businesses foreseeing a change of ownership in the business over the next three Years.

![Bar chart showing businesses most likely to sell percentage of businesses foreseeing a change of ownership in the business over the next three Years.]

*Source:* Grant Thornton IBR 2013

**Europe:** Owners of UK and Irish businesses (12%) remain some of the most open and upbeat about the potential to sell their business. Respondents from countries across mainland Europe (8%) are generally less forthcoming or expectant to sell their business in the next three years. However French business owners showed an increased interest and are 25% more likely to sell in the next three years compared to

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\(^{62}\) Ibid.

\(^{63}\) Ibid.
last year. Interestingly it is business owners in the Netherlands (14%) and Finland (26%) who are amongst the most positive regarding a future sale of their business. Rest of the world: Globally the trend is very similar with many respondents not showing an inclination to sell, though those from Brazil (19%) and South Africa (15%) expressed a far greater interest than the rest of the world. Exit route: Selling to a competitor is the most likely exit route for businesses in the current climate. Whilst 44% of UK businesses expect to sell to a trade buyer, South African businesses (35%) see their most likely exit route being to management, 35% of Canadian firms expect to hand over their business to family. To further underline the investment made by PE firms in South America, 40% of Brazilian companies expect to exit via private equity.

According to the Cookson, “Cross-border merger activity has become increasingly important to US over the last decade. Historically, US have been a net acquirer, though this changed slightly in 2012 as a result of significant investment from Asia Pacific buyers. There has been a flurry of deal announcements in recent weeks as credit markets have improved at a time when business optimism is increasing, which has been reflected by the level of the stock market.” However, across the world, M&A remains a key strategic tool to drive growth and build scale. The marked increase in prominence and importance of cross-border M&A to business owners, illustrates that, accessing global markets and opportunities is now more than ever a vital growth strategy. At Grant Thornton, we have the global advisory capability and expertise to provide insightful global advice and support to domestic and international businesses, seeking to expand their operations organically or through acquisition.

2.6 Merger and Amalgamation: Indian Scenario

The Indian economy has undergone a major transformation and structural change through the economic reforms introduced by the Government of India in 1991. Since then, the M&A movement in India have picked up momentum. In the liberalized economic and business environment, ‘magnitude and competence’ have become the focal points of every business enterprise in India, as companies have realized the

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64 Ibid., pp.8
65 Ibid.
66 Ibid., pp.8-9
67 Ibid.
need to grow and expand in business that they understand well to face the competition. Indian corporate has undertaken restructuring exercise to sell off non-core business and to create stronger presence in their core areas of business interest. M&As emerged as one of the most effective methods of such corporate restructuring and have, therefore, become an integral part of the long term business strategy of corporates in India. In Indian industry, the pace for mergers and acquisitions activity picked up in response to various economic reforms introduced by the Government of India since 1991, to facilitate liberalization and globalization. The Indian economy has undergone a major transformation and structural change following the economic reforms, as "size and competence" have become the focus of business enterprises in India. Indian companies realized the need to grow and expand in businesses that they understood well, in order to face the growing competition. Several leading corporates have undertaken restructuring exercises to sell off non-core businesses, and to create stronger presence in their core areas of business interest. Mergers and acquisitions emerged as one of the most effective methods of such corporate restructuring, and became an integral part of the long-term business strategy of corporate sector in India. Over the last decade, mergers and acquisitions in the Indian industry have continuously increased in terms of number of deals and deal value. A survey among Indian corporate managers in 2006 by Grant Thornton found that Mergers & Acquisitions are a significant form of business strategy today for Indian Corporate sectors. The three main objectives behind any M&A transaction (see table 2.6.1) for corporate sector today were found to be:

- **Improving** Revenues and Profitability
- **Faster growth** in scale and quicker time to market
- **Acquisition** of new technology or competence

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Table 2.6.1: Objectives of Indian Corporates for M&As

<table>
<thead>
<tr>
<th>Objective behind the M&amp;A Transaction</th>
<th>Responses (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To improve revenues &amp; Profitability</td>
<td>33%</td>
</tr>
<tr>
<td>Faster growth in scale and quicker time to market</td>
<td>28%</td>
</tr>
<tr>
<td>Acquisition of new technology or competence</td>
<td>22%</td>
</tr>
<tr>
<td>To eliminate competition &amp; increase market share</td>
<td>11%</td>
</tr>
<tr>
<td>Tax shields &amp; Investment savings</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: Grant Thornton (India), the M&A and Private Equity Scenario, 2006

Table reveals that improvement in revenues and profitability is the most important objective behind the M&As deal which accounts for 33 percent. Faster growth in scale and entry in new market is the second most important at 28 percent. Newer technology acquisition is another important objective which stands at 22 percent. The next objective to eliminate competition and gain market share stands at 11 percent followed by the objective to reduce the tax burden which accounts for 3 percent. The above discussion reveals that M&As is basically a mode of expansion and growth in order to sustain the increased competition.\(^70\)

2.6.1 Merger Activity in India: The post liberalization period saw negotiated mergers between large business groups.' The early reported mergers in India included the merger of Bengal Iron and Steel Co with Indian Iron & Steel Co Ltd in 1936 and the acquisition of Pukhuri Tea Co Ltd by Bishnauth Tca in 1965. Globalization and liberalization of the Indian economy at the onset of the 1990s paved the way for consolidation towards the end of the decade. During the decade, many business groups undertook restructuring processes to face competition.\(^71\)

2.6.2 Emergence of the M&A Wave in India: During the pre-liberalization licensing era (prior to 1991), several companies indulged in unrelated diversifications based on the availability of licenses.' The companies thrived in spite of their inefficiencies because the total capacity of the industry was restricted due to the licensing policy. The policy of decontrol and liberalization coupled with globalization of the economy exposed the corporate sector to severe domestic and global competition. This was further accentuated by recessionary trends, which resulted in fall in demand, which, in


\(^{71}\)Kumar, B. Rajesh, Op.Cit.pp.6
turn, resulted in overcapacity in several sectors of the economy. Prior to 1994, the Murugappa Group, the Chabana Group and the RPG (R.P. Geona) Group sought to build industrial empires through acquisitions. They followed the prevailing industrial practice of building a conglomerate of diverse businesses. In India, the first wave of corporate deal making lapped Indian shores in the 1980s. This was the era of the first tentative reforms under Mr Rajiv Gandhi (the then Prime Minister of India) and the birth of large-scale corporate ambition. The first corporate raiders were Swraj Paul, Manu Chhabria and R P Goenka. The second wave of M&As was largely built on the theme of corporate restructuring during the period from 1992 to 1995. Post liberalisation, conglomerates that had built sprawling and unfocused business portfolios, were forced to sell non-core businesses that could not withstand competitive pressures. The third wave splashed its way through the corporate landscape during 1997-2002. There was a round of consolidation in key sectors like cement and telecommunications. A new type of deal also made its presence felt—venture capital. Money poured into start-ups, especially in technology and IT services. However, many start-ups could not survive leading to M&A activity in the IT arena. The fourth wave (2004-2006) witnessed a flurry of global deals. Private equity investors and MNCs got bullish about India during this period. Overseas acquisitions by Indian companies also gained prominence. A significant change happened in 1994 when the necessity for formulating a new takeover code was felt by the regulatory authorities. The policy and regulatory framework governing M&A evolved over the 1990s. Before 1990, an open offer was mandatory for acquiring 25 per cent stake in a company. In 1990, this threshold was reduced to 10 percent of the company’s capital. As a part of the package of reforms and policy liberalization, the government announced the New Industrial Policy (NIP) in July 1991. NIP accorded a more liberal attitude to FDI inflows. Further, FERA restrictions on foreign ownership in Indian companies were abolished and the requirement of prior government approval on M&A was removed. In 1992, the Government of India created the Securities and Exchange Board of India (SEBI) with powers to regulate the Indian capital market and to protect investors’ interests. In November 1994, with a view to regulate takeovers, SEBI promulgated the Substantial Acquisition of Shares and Takeover (SAST) Regulation Act, which was modeled closely along the Lines of the UK City Code of Takeovers and Mergers. The revised SAST Regulation 1997 was amended in 2002, 2004 and 2006. The latest amendment in 2006 was meant to
facilitate M&As and help companies to restructure themselves to achieve greater economies of scale, and to compete in the global market. According to McKinsey data, by 2005, India emerged as one of the top three markets in Asia, with total deals estimated to have crossed the $20 billion mark, against $10 billion in 2004. Mergers and Acquisitions are key forms of corporate restructuring. The mergers and acquisitions come into existence from the post independence period in India. But very few M&A took place in India prior to 1990s due to Industrial Development and Regulation Act 1951, FERA Act, MRTP Act. After 1890s especially after liberalization in 1991, there was a cut throat domestic and global competition. This led to a big wave of M&A. Takeovers started only in the year 1996 and then onwards this mode of M&As gained importance. The Tata Group had 126 M&As deals from April 1998 to March 2008. The number of deals really picked up in the year 1999 with total of 1453 deals as compared to only 172 deals in 1998. The years 2000, 2007 and 2008 saw decline in the deals by 22%, 2% and 24% respectively due to the global credit crisis. However the flow of M&A had a decreasing trend from the year 2000 to 2008. The trends in Indian M&A, which recorded a rapid increase between 2003 and 2007 registering a compounded annual growth rate of 95% at $70 billion. But it dipped from the global crisis in 2008, a fresh peak of $50 billion by 2010. The robust sector of Telecom, which with an innovative support from the regulatory authority saw a progressive growth, post-liberalization recorded the highest M&A activity during the year with an aggregate of $14.6 billion investment powered by the acquisition of Hutch Essar by Vodafone and Tata Tele buying the NTT DOCOMO of Japan. Oil & gas sector with $11.2 billion (Reliance Natural) and Pharma Sector with $ 6.24 billion led the charge of the M & A brigade. This underscored not only India's incorporation appetite for going global, but making M & A its critical tool of business strategy for survival and growth. There has been a considerable shift seen in 2010 in the outlook of Indian companies which relooked at M&A's as one of their key growth strategies. During the year 2010, Indian companies were involved in a record total of 627 M&A deals, including both cross-border and domestic transactions. 283 of these deals, whose announcements included the transaction value, totaled a massive $ 65.9 billion which were significantly higher when compared to 2009 which witnessed a

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72 Kumar, B Rajesh, Op.Cit.pp.7-8
total of 413 M&A deals (including 183 deals) with an announced value of $18.4. Figure 2.6.1 shows that the Merger and Acquisitions activity depicts an increasing trend since 1999 to 2013.

**Figure 2.6.1: Mergers and Acquisitions Announced in India during the period 1999-2013**

Source: Thomson Financials, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013

According to the Institute of Mergers, Acquisitions and Alliances (IMAA) analysis, 2013, it is observed that the value of M&As activity increased approximately 15 times in the year 2010 as compared to the year 1999. The number of merger activity was highest in the year 2007 with the value of transaction value approximately 60 (in. bil. $US). The first quarter for the year 2013 (January to March) shows nearly 300 numbers of transactions with value of transactions 10 (in. bil. $US). The expected merger and acquisitions for the whole year 2013 as per the IMAA analysis is nearly 1100 numbers of transactions with approximately more than 40 (in. bil. $US).

**2.6.3 The Latest Trends of Mergers and Acquisitions in India**

The number of Indian companies opting for mergers and acquisitions are increasing year after year. So, India is now one of the leading nations in the world in terms of mergers and acquisitions. Among the different Indian sectors that have resorted to

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mergers and acquisitions in recent times, telecom, finance, FMCG, construction materials, automobile industry and steel industry are worth mentioning. The situation of mergers and acquisitions in India has undergone a sea change in the last couple of years. In Indian corporate sector mergers and acquisitions of foreign companies by the Indian companies has been showing the latest trend. There are different key factors like dynamic attitude of Indian entrepreneurs, buoyancy in economy, favorable government policies, additional liquidity etc. behind the changing scenario of trends of mergers and acquisition in India. The IT and ITES sector have already played a dominant role in global market. The other Indian sectors are following the same trends. The increased participation of the Indian companies in the global corporate sector has further facilitated the merger and acquisition activities in India. The process of restructuring of Indian industries did not commence immediately after liberalization. It was the industrial slow down since 1996, which squeezed the profit margins of Indian corporate entities and forced them to restructure their operations to achieve greater competitiveness. This has driven the companies to go for expansion and consolidation through M&As.\textsuperscript{75} The practice of mergers and acquisitions has attained considerable significance in the contemporary corporate scenario which is broadly used for reorganizing the business entities. Indian industries were exposed to plethora of challenges both nationally and internationally, since the introduction of Indian economic reform in 1991. The cut-throat competition in international market compelled the Indian firms to opt for mergers and acquisitions strategies, making it a vital premeditated option. The factors responsible for making the merger and acquisition deals favorable in India are:

- Dynamic government policies
- Corporate investments in industry
- Economic stability
- "ready to experiment" attitude of Indian industrialists

Sectors like pharmaceuticals, IT, ITES, telecommunications, steel, construction, etc., have proved their worth in the international scenario and the rising participation of Indian firms in signing M&A deals has further triggered the acquisition activities in India. In spite of the massive downturn in 2009, the future of M&A deals in India looks promising. Indian telecom major Bharti Airtel is all set to merge with its South

\textsuperscript{75} Singh, Partap, Op.Cit. pp.5
African counterpart MTN, with a deal worth USD 23 billion. According to the agreement Bharti Airtel would obtain 49% of stake in MTN and the South African telecom major would acquire 36% of stake in Bharti Airtel.

2.6.4 Ten Biggest Mergers and Acquisitions Deals in India.

- Tata Steel acquired 100% stake in Corus Group on January 30, 2007. It was an all cash deal which cumulatively amounted to $12.2 billion.
- Vodafone purchased administering interest of 67% owned by Hutch-Essar for a total worth of $11.1 billion on February 11, 2007.
- Indian Aluminium and copper giant Hindalco Industries purchased Canada-based firm Novelis Inc in February 2007. The total worth of the deal was $6-billion.
- Indian Pharma industry registered its first biggest M&A deal in 2008 through the acquisition of Japanese pharmaceutical company Daiichi Sankyo by Indian major Ranbaxy for $4.5 billion.
- The Oil and Natural Gas Corp purchased Imperial Energy Plc in January 2009. The deal amounted to $2.8 billion and was considered as one of the biggest takeovers after 96.8% of London based companies' shareholders acknowledged the buyout proposal.
- In November 2008, NTT DOCOMO the Japan based telecom firm acquired 26% stake in Tata Teleservices for USD 2.7 billion.
- India's financial industry saw the merging of two prominent banks - HDFC Bank and Centurion Bank of Punjab. The deal took place in February 2008 for $2.4 billion.
- Tata Motors acquired Jaguar and Land Rover brands from Ford Motor in March 2008. The deal amounted to $2.3 billion.
- Sterlite Industries Ltd's acquired Asarco LLC in 2009 for $1.8 billion making it ninth biggest-ever M&A agreement involving an Indian company.

In May 2007, Suzlon Energy took over the Germany-based wind turbine producer Repower. This M&As deal is the 10th largest in India, the M&A deal amounted to $1.7 billion.\textsuperscript{76}

\textsuperscript{76} Mergers and Acquisitions in India retrieved from http://business.mapsofindia.com/finance/mergers acquisitions/mergers-and-acquisitions.html
2.7 Legal Perspective of Mergers and Amalgamations in India

Involvement of social interest in economic activities implies application of law with a view to regulate the activity to ensure safeguard of general public interest. In business combinations, in any form of takeover or merger, the individual and community interest of different parties namely, shareholders, creditors' employees and consumers are involved from different angles. Legal provisions for regulating the formation and organizational framework have been formulated to safeguard public interest of all shareholders concerned.

India's economic system has been a regulated economy and the objectives of socialistic pattern of society have led to the regulatory framework which is more in the nature of lessening the concentration of economic power in few hands. The 1990s led to the Liberalization of the economy demanding much more restrictions in-built in the legal system. The mergers and takeovers of corporate enterprises are governed by the Companies Act-1956, Industries Act- 1951, MRTP Act-1969, FERA-1973, SICA-1985, Income Tax Act, 1961, SEBI Act-1992, Banking Regulation Act.1949 etc. These legal provisions regulate the takeover and merger of corporate enterprises.

Under the Indian Companies Act, amalgamation or mergers mean an arrangement by which transfer of undertakings is affected. Sections 391 to 396 of the companies Act deals with such an arrangement.77 Other statutes which deal with merger proposals are the Industries Development of Regulation Act 1951; the Foreign Exchange Regulation Act, 1973; the Sick Industrial Companies (Special Provisions) Act, 1985; the Income Tax Act, 1961 and the SEBI Act 1992.78

2.7.1. Companies Act, 195679;

The following significant points need to be considered for any M&As deal:-

i. An application to be submitted to the court for proposal for merger of the companies.

ii. Order of the court to be sought for a meeting of the creditors on the validity of the applications.

iii. Submission of all the necessary documents and material facts relating to the company’s financial position along with the auditor’s reports.

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78 Ibid.
79 Ibid.
iv. The court is empowered to make modifications besides carrying out the scheme of merger or to wind up of a company whose it feels that cannot work satisfactorily.

v. "If a majority, in number representing three fourth in value of the creditors, or class of creditors or members or class of members present and voting either in person or by proxy at the court convened meeting in favour of the scheme, it shall, if sanctioned by the court, the binding on the creditors, class of creditors, members, class of members as the case may be and also on the company. If there is a division, and the statutory majority has approved the scheme, the dissent of the others will have no effect on the scheme. However, the court may, under section (1) (v) of the companies Act, make provision to deal with such dissenting creditors or members. The order of the court sanctioning the scheme shall have effect only after the certified copy of the order has been filed with the registrar. 80

vi. The basic difference between a court merger and an acquisition is that the transferor company will be dissolved without winding up in the case of a court scheme, if the scheme provides of the same, whereas in the case of an acquisitions the transferor company continues to exist. Under section 396 of the companies Act 1956, the central government is empowered to order the merger of two companies in the public interest when the procedure of making application to the court etc is required to be followed. 81

2.7.2 THE MRTP ACT, 1969 82

Part A of Chapter III of the MRTP Act, 1969, consisting of section 20 to section 26, dealing with Mergers and Acquisitions, providing for the ‘Concentration of Economic Power’ was omitted by the MRTP (Amendment) Act, 1991, w.e.f. 27-9-1991.

However, prior to such omission the most prominent provision under the MRTP Act, 1969 as regards Mergers, Amalgamations and Takeovers was provided under section 23 of the Act. Section 23 laid down strict criteria in formation of any of the aforementioned combinations where the foremost being that no such scheme was to take effect unless it was sanctioned by the Central Government.

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80 ibid, p.31.
81 ibid.
82 M&A under the MRTP Act, 1969, retrieved from http://jurisonline.in/?p=2075
Section 23 of the Act provided for both the Statutory as well as the Procedural requirements where for getting sanction from the Central government an application in the prescribed form is mandatorily required to be made along with the copy of the scheme annexed to such application. Section 23 is always read with section 2(d) which defined a ‘Dominant undertaking’, however, this also faced the wrath of being substituted and omitted w.e.f. 27-9-199 and it was defined as:

i. An undertaking which, by itself or along with other inter-connected undertakings, produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or

ii. An undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any substantial part thereof.

Section 23 provides that none of these provisions would apply to any scheme of takeover by the owner of an undertaking where the acquired undertaking is not a ‘dominant undertaking’.

Finally, where the above mandates are fulfilled, the Central Government shall call upon the applicant to satisfy that the scheme in no way leads to ‘concentration of economic power’ and where the Central Government is of the opinion that the criteria laid down are fulfilled, it shall after receipt of the MRTP Commission, pass the requisite orders. Section 24 of the Act provided that where the central government of the opinion that any violation of section 23 requirement has been committed, it may in consultation with the MRTPC direct the owner to cease or desist from such contravention in addition to ordering ‘penalty’.

Therefore, this provision gave absolute powers to the Central Government in matters relating to the Mergers and Amalgamations in relation to MRTP Companies. However, the ill-effect of this absolute power was that all Mergers and Amalgamations became the exclusive jurisdiction of the Central Government and it was not bound to follow the recommendations made by the MRTP Commission.

The provisions were into play until the economic liberalization measures in the early nineties, the prominent exception however in 1985 that, the minimum asset limit for referring a company to the MRTP Commission was raised from 20 Crores to a 100 Crores, impliedly relaxing the stringent requirements for companies having assets valued at less than 100 Crores.
2.7.3. Foreign Exchange Regulation Act (FERA) 1973 to Foreign Exchange Management Act 2000:

"Permission of the Reserve Bank of India is required under Section 19(1) (d) of FERA for the issue of any security to a person resident outside India. Accordingly, in a merger, the transferee company should obtain permission before issuing shares in exchange of shares held in the transferor company."^83 In the budget of 1997-98, the Finance minister, Mr. Y. Sinha made an audacious announcement to replace FERA with FEMA (Foreign Exchange Management Act) and finally in June 2000, a bill was passed to this effect where the RBI has become facilitator from a regulator for cross border trade and business.

2.7.4. Industries (Development and Regulation Act), 1973:

The company’s act applicability in case of merger of industrial undertaking is limited. The High court permission under section 18 FA of this Act to appoint anyone to take over the management of the industrial undertaking on the application of the central government is adequate enough for the purpose of running or restarting it without the need to get a new license since the license of the amalgamating company is treated as adequate for the purpose of the amalgamated company since the takeover includes licenses also.

2.7.5. Sick Industrial (Special Provisions) Act 1985: Under this Act, the following points need to be taken care of:-

I. The Act is not applicable to non-Industrial company and SSIs including ancillary undertakings.

II. Company to be considered sick if it is registered for five years and accumulated losses are equal to net worth at the end of the financial year.

III. On becoming a sick company, it is to be referred to BIRF.

IV. The scheme of sanctioned merger to be approved through special resolution of the shareholders.

V. Provision under the Act hearing the views of employees, particularly of the employee of the transferor company, anticipating uncertainty on merger.

VI. Scheme, once sanctioned and completed will be binding on them in all reports.

2.7.6. Government Regulation Scheme of SEBI and M&As and Takeovers:

"Regulation of the Securities Exchange Board of India (Substantial Acquisition of

shares and Takeover) Regulation 1994 provides that chapter III of the regulations (relating to takeovers) will not apply to the acquisitions of shares pursuant to a scheme of amalgamation under section 391 and 94 of the Companies Act, 1956 and to the acquisition of shares pursuant to a scheme framed under the Sick Industrial Companies (Special Provisions) Act." 84

Legal practitioners and expert in corporate restructuring have however called for a far more practicable and stringent takeover code from the Securities and Exchange Board of India (SEBI). There is a lot of room for improving on the legal infrastructure to facilitate more corporate acquisitions, mergers and restructuring. Disclosure standards in court-based restructuring and acquisitions are way behind international standard. The explanatory statements in the schemes of merger and acquisitions conceal more then they reveal. They merely repeat stereotypical reasons such as global trends, consolidation, etc. Acquirers should put out a five-year post acquisition business plan and disclose specific details of the manner in which the acquisition is being funded. The code provides a long list of disclosure requirement. It is for merchant bankers, lawyers to ensure full disclosure by their clients. However, the code insists on a bank guarantee for only 30 days from the opening of the offer. In fact, the code should provide for only cash or bank guarantee in the escrow, and should ban deposit of shares and securities in the escrow. Moreover, violation of the code should invite a ban of 3-5 years from access to the market, instead of the current provision of a 12 month ban.

2.7.7. The Foreign Exchange Management Act, 1999 (FEMA) 85

The process of Mergers and Acquisitions (M&A’s) especially the cross border deals involve foreign exchange transactions. Hence it is most appropriate to discuss a synoptic view of the Foreign Exchange Management Act (FEMA), 1999 which was formulated as an improvement over the Foreign Exchange Regulation Act (FERA), 1973 in order to facilitate external trade and payments and also promote the development and maintenance of the foreign exchange market in India on 29 December, 1999. The Act extends to the whole of India and also to all branches, offices and agencies located outside India but owned by an Indian citizen and came to force on 1 June, 2000. According to Section 3 of this Act, no person shall engage

85 Department of economic affairs, government of India, retrieved from http://http://minfin.nic.in/the_ministry/dept_eco_affairs/america_canada/Fema_act/index.htm
himself in any dealing relating to transfer of foreign exchange or foreign security with a person who is not authorized. No transaction should be made to or to the credit of a person who is not resident in India. Also the Act clearly disallows receipt of any payment on behalf of or by the order of a person who is not resident of India. Financial transactions done in India in relation to acquisition or creation of transfer of a right to acquire an asset outside India by any person is also prohibited by the Act. Apart from provisions duly provided for in the Act holding of foreign exchange, foreign security and immovable property outside India is also clearly disallowed. Current account transactions in a manner approved through an authorized person is allowed, provided there are no restrictions imposed by the RBI in this regard (Section 5).

As per Section 6 a person may enter into capital account transactions involving foreign exchange but only through authorized persons. In consultation with the RBI, Central Government issues regulations regarding these capital account transactions as per Section 6 (3). However as per Section 6 (4) a person resident in India might be allowed to hold foreign currency, security or immovable property outside India if he owned it when he was a resident outside India or he inherited it by a person who is resident outside India. In the same way a person who is resident outside India might be allowed to own Indian currency, security or immovable property if he owned it when he was a resident of India or he inherited by someone who was resident in India as per Section 6 (5). The Reserve Bank of India without any discretion might put restrictions on the operations of a branch or office by a resident outside India.

Section 7 provides various provisions and measures to be undertaken by exporters of goods and services which include providing all the relevant details about goods to be exported and also the value to be realized for the same. All relevant information required for realization of the export proceeds should also be provided. Section 8 states that in case of persons to whom foreign exchange is to be accrued, shall take all reasonable measures to realize and repatriate it in the manner specified within the stipulated period. Section 9 provides detail about certain exceptional situations where provisions of Section 4 and 8 are exempted. For example, foreign exchange is allowed to be held in certain permissible limits or in a limit that is specified by the RBI or that received as gift or inheritance or through legitimate employment or through other means as specified by the RBI. Reserve Bank of India is empowered under Section 10 to authorize a person to deal in foreign exchange on the basis of an application.
received in this regard. The authorization should be in written and duly comply all the provisions. RBI may also revoke such authorization for a reason it deems fit and a reasonable opportunity to be heard is required to be provided to the authorized person in this regard. The person authorized to deal in foreign exchange has to be utmost careful in his operations and take due care that his operations are not in contravention of any Provisions laid down in this regard. As per Section 12, RBI can make inspections and examine operations of the persons so authorized and the latter are required to furnish all particulars and information in this regard. Section 13 to 15 gives details about the penalties and provisions imposed in cases where above regulations are not complied with. In case of companies, if a person violates any of the provision then the person who is in charge (or at the helm of affairs at the time the contravention took place) would be held responsible. Both him and the company would be guilty and would be liable for prosecution and imposition of penalties as specified. However, such person would not be liable for punishment if he proves that the violation that took place was not in his knowledge and on his part he carried out his duties with due diligence. If he fails to prove so, he would be deemed to be held guilty for the contravention and would be punished accordingly.

Section 36 and 37 enlists various provisions relating to the establishment of the Directorate of Enforcement and also the various powers provided regarding investigations of Acts that are not in compliance with the provisions of this Act.


"Section 72A laid down that where there has been an amalgamation of a company with another, and the central government, on recommendation of the special authority, is satisfied that certain conditions laid down in the section are fulfilled, the accumulated unabsorbed losses (not being a loss sustained in a speculation business) and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or allowance of the amalgamated company to be the loss or allowance of the amalgamated company for the previous year in which the amalgamation was effected".86

The conditions stipulated in the Section are:87

- The amalgamating company to be financially non-viable by reason of its liabilities, accumulated losses and other relevant factors prior to such

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86 Ibid., p.16
amalgamation.

- Amalgamation to be in public interest and for carting the business more economically and efficiently.

"In case of amalgamations of companies, the existing requirement of routing the proposal through BIFR is removed. It is also proposed that all fiscal concessions will survive for the unexpired period in case of amalgamations and demergers and the existing provisions will be rationalized as under for any amalgamations not necessarily an amalgamation through BIFR".\textsuperscript{88} The carry forward and set off of accumulated losses and unabsorbed depreciation will be available to the amalgamated company subject to certain conditions to be prescribed. The amortization of expenditure on technical knowhow enjoyed by the amalgamating company will be available to amalgamated company.\textsuperscript{89} Amalgamation expenses will be allowed as deductions equally over five years. In case of an Indian subsidiary of a foreign company, the brought forward losses will not lapse in spite of change in shareholding, subject to certain conditions. In the case of GDRs and FCCBs, the concessional tax provisions will continue to apply to the shareholders and bondholders. These far reaching amendments to the Income Tax Act will certainly create opportunities for more mergers and amalgamations".\textsuperscript{90}

2.7.9 The \textbf{Competition Act, 2002}\textsuperscript{91}

As per the Competition Act in the event of an acquisition of one or more enterprises by one or more persons or merger or amalgamation of companies is considered as a combination, as per \textbf{Section 5} if the parties involved in the acquisition, which includes the acquirer and also the entity or the enterprise which has been acquired or is being acquired jointly have in India assets of a value exceeding one thousand crores or a turnover of more than three thousand crores (Section 5 (a) (i) (A). The persons involved should fulfills the above condition or they should have in India or outside India assets valuing more than US$ 500 million or a turnover exceeding US$ 1500 million(Section 5 (a) (i) (B) or as per Section 5 (a) (ii), the group which is being formed as a result of the amalgamation or merger would post-acquisition have in India

\textsuperscript{88} Ibid, p.3.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
\textsuperscript{91} the competition act 2002, the gazette of india extraordinary part-ii section 1, Ministry of law and justice(legislative Department), 14 january (2003), new delhi, Retrieved from unctad.org/sections/dite_ccpb/docs/dite_ccpb_ncl_india_en.pdf
assets valuing more than Rs 4000 crores or have a turnover exceeding Rs 1200 crores (Section 5 (a) (ii) (A)) or the group as per Section 5 (a) (ii) (B) should have assets aggregating over US$ 2 billion or a turnover of more than US$ 6 billion in India or Outside India.

Section 5 (b) (i) enlists the various provisions involved in cases where the person who is acquiring control already has a direct or indirect control over another enterprise engaged in production, distribution, trading of similar businesses, in these cases according to Section 5 (b) the enterprise to be acquired and the enterprises over which the acquirer already has an indirect or direct control should jointly have in India assets aggregating more than Rs 1000 crores or a turnover of more than Rs 3,000 crores as per Section 5 (b) (i) (A) or as per Section 5 (b) i (B) assets grossing more than US$ 500 million or a turnover exceeding US$ 1500 million in India or outside India. As per Section 5 (b) (ii), the group that has undertaken the acquisition should jointly have or after the acquisition should jointly have assets in India of a value exceeding 4000 crores or a turnover of more than Rs 12000 crores (Section 5 (b) (ii) (A) or as per Section 5 (b) (ii) (B) have in India or outside India assets of a value of more than US$ 2 billion or a turnover exceeding US$ 6 billion. As per section 5 (b) (ii) (C), the merger or amalgamation as a result of which an enterprise is created should have in India assets valuing more than Rs 1000 crores or a turnover that is exceeding Rs 3000 crores or it should have in India or outside India assets aggregating more than US$500 million or a turnover of more than US$ 1500 million. As per Section 5 (b) (ii) (C) (ii) the group that has been created as a result of the merger of the enterprise should or would have in India assets valuing more than Rs 4000 crores or a turnover of more than Rs 12000 crores or should have in India or outside India assets of a value of more than US$ 2 billion or a turnover exceeding US$ 6 billion.

As per Competition Act 2002, the term group implies, “two or more enterprises which, directly or indirectly, are in a position to —
(i) Exercise twenty-six per cent, or more of the voting rights in the other enterprise; or
(ii) Appoint more than fifty percent, of the members of the board of directors in the other enterprise; or
(iii) Control the management or affairs of the other enterprise;”

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92 Ibid pp.21
Section 6 of the Act lists the various guidelines of the prescribed framework that regulates the various combinations in India. According to section 6(1) if in case of a combination an enterprise is likely to have an adverse impact on the level of Competition in the market it would not be allowed and any such combination would be declared as void. Section 6 (1) further gives details about the relevant procedures to be followed by those whose propose to enter into a combination. For the purpose a notice is to be given to the commission along with the relevant fees and required details involving the proposed combination which has to be duly provided within seven days of the approval of the merger to be undertaken under Section 5 (e) by the Board of Directors of the concerned enterprises relating to the merger or amalgamation undertaken (Section 6 (2) (a). According to Section 6 (2) (b) all relevant documents related to the execution of the agreement under various appropriate sections have to be duly furnished. Section 6 (3) provides that the commission should deal with the notice received relating to the proposed combination as per Section 29, 30 and 31. Section 6 (4) states that the provisions should not apply to subscription of shares or financing by a public financial institution, foreign institutional investor, bank or venture capital fund under a loan or investment agreement. Section 6(5) gives details about the requirements to be fulfilled by the financial agencies referred above in Section 6 (4). These have to within 7 days from the date of acquisition provide all the necessary and relevant details to the commission.

2.8 Conclusion

This chapter deals with the concepts related to Mergers and Acquisitions (M&As), Takeover, Amalgamations, Consolidations along with the motives of mergers at length. It also throws light on the global and Indian merger and acquisitions scenario. The global Scenario provides an insight in to the projections relating to merger and amalgamations worldwide (Europe, Asia pacific, South East Asia, North America, and South America). It also explained the legal process and various laws and regulations. Keeping in mind the various facets, it is concluded that the complexity of our legal system needs to be reduced but protecting the rights of the domestic producer and customers should be accorded the highest priority. Having discussed the global and Indian scenario of mergers and acquisitions (M&As), the next chapter deals mergers and amalgamations in the Indian banking sector since economic liberalization.